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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,335	02/19/2004	S. Collar Waters	CRECON P02AUS	7117
20210	7590	03/22/2005	EXAMINER	
DAVIS & BUJOLD, P.L.L.C. FOURTH FLOOR 500 N. COMMERCIAL STREET MANCHESTER, NH 03101-1151			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 Office Action Summary	Application No. 10/782,335	Applicant(s) WATERS, S. COLLAR	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

The indicated allowability of claim 20 and the objected to claims 11, 12, and 14 are withdrawn in view of the newly discovered reference(s) to U.S. Patent No. 5,622,004 to Gidge. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claim 10 is objected to because of the following informalities:

Claim 10 should end with a period not a semi-colon.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 8-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,622,004 to Gidge.

Regarding Claims 1 and 14, Gidge teaches a stackable unit and kit for automatically dispensing fluid to at least one growing medium container (Gidge Fig. 14 2U and 2L) associated with the stackable unit (Gidge Fig. 14 #3), the stackable unit comprising: at least one growing medium container (Gidge Fig. 14 2U and 2L), a reservoir (Gidge #8 Col. 5 line 41-42) having an open top to facilitate filling thereof, a drainage channel (Gidge Fig. 14 #15) communicating with the reservoir, and the

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drainage channel having an inlet (Gidge Fig. 14 #14) located adjacent the open top of the reservoir to facilitate draining of excess fluid from the reservoir (Gidge Col. 5 line42-51); the reservoir having at least one lateral dispensing opening (Gidge Fig. 14 2A) adjacent (Webster's Collegiate Dictionary defines "adjacent" as nearby or not distant; being in close proximity; always implies the absence of anything of the same kind between; may or may not imply contact therefore element 2A of Gidge is adjacent the bottom of element #3) a bottom wall of the reservoir, for dispensing fluid from the reservoir into growing medium, when accommodated by the at least one growing medium container of the stackable unit; and the least one lateral dispensing opening supporting a capillary member (Gidge Fig. 14 #6) which controls flow of fluid from the reservoir to the at least one growing medium container, for providing moisture thereto to facilitate growing of a plant, the fluid flowing substantially horizontally and radially through the capillary member.

Regarding Claim 2, Gidge teaches the stackable unit defines a central axis and the drainage channel (Gidge Fig. 14 #15) extends substantially parallel to the central axis of the stackable unit but is spaced radially therefrom.

Regarding Claims 3 and 16, Gidge teaches wherein each stackable unit includes at least two growth medium containers and each of the growth medium containers communicates with at least two dispensing openings to facilitate transfer of the fluid from the reservoir to the growth medium container (Gidge Fig. 14 #16 and 2U and Fig. 4).

Regarding Claims 4 and 17, Gidge teaches wherein the capillary member (Gidge Fig. 14 #6) is a plug which fills the dispensing opening (Gidge Fig. 14 #2a) and facilitates the horizontal and radial passage of fluid, via capillary action, from the reservoir to a the growth medium container.

Regarding Claims 5 and 18, Gidge teaches wherein the capillary member is an elongate tubular (Gidge Fig. 6 #6) member having first and second opposed ends, one end of the capillary tubular member communicates with a first one of the dispensing openings and the second end of the capillary tubular member communicates with a second dispensing opening, and an intermediate portion of the tubular member is accommodated within the growth medium container (Gidge Fig. 4 #6), the elongate tubular member extending substantially horizontally and radially from the first to the second dispensing opening.

Regarding Claim 6, Gidge teaches wherein the growth medium container is sized to accommodate a volume of growth medium of between about 500 and 5000 cubic inches (Gidge Col. 3 Chart line 51-60, first line of chart), and the reservoir is sized to accommodate a volume of fluid of between 25 and 140 fluid ounces (Gidge Col. 2 line 7, 1 gallon is less than 140 fluid ounces).

Regarding Claim 8, Gidge teaches wherein the stackable unit includes a plurality of growing medium containers (Gidge Fig. 14 #2U and 2L), and the plurality of growing medium containers are arranged radially symmetrically about the reservoir.

Regarding Claim 9, Gidge teaches wherein an upper portion of the stackable unit is shaped to matingly engage with a lower portion of another stackable unit to facilitate

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nesting of at least two stackable units with one another in a nested array (Gidge Fig.14 #3).

Regarding Claim 10, Gidge teaches wherein an upper portion of the stackable unit forms a male component (Gidge Fig. 14 the bottom corner of top element #3) which matingly engages with a female component (Gidge Fig. 14 the open top lip of bottom element #3) of an adjacent lower stackable unit to facilitate nesting of at least two stackable units with one another in a nested array.

Regarding Claims 11, 15, and 20, Gidge teaches when a volume of fluid enters the reservoir of a top most stackable unit, the fluid will overflow through the drainage channel (Gidge Fig. 14 #15) of the top most stackable unit and into the reservoir of an adjacent lower stackable unit (Gidge Col. 5 line 36-51).

Regarding Claim 12, Gidge teaches the stackable unit further includes an indexing structure (Gidge Fig. 14 illustrates that element #15 engages element #16 and has several element #15 that all aren't vertically aligned) for engaging immediately adjacent stackable units with one another such that the drainage channels of the immediately adjacent stackable units are prevented from being vertically aligned with one another.

Regarding Claim 13, Gidge teaches the stackable unit includes a deflection plate (Gidge Col. 5 line 45) associated with the drainage channel which forms a shield and deflects fluid flowing through the drainage channel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,622,004 to Gidge.

Regarding Claims 7 and 19, Gidge teaches the capillary member, but is silent on the capillary member has a wall thickness of about between 0.0625 and 0.5 inches so as to facilitate an adequate fluid transfer rate, via the capillary member, such that growth medium contained within the at least one growing medium container is maintained sufficiently saturated. It would have been obvious to one of ordinary skill in the art to modify the teachings of Gidge at the time of the invention through routine tests and experimentation to derive an efficient thickness of the capillary wall since the modification is merely a change in size to accommodate the different water needs of various plant varieties. Different plant varieties have different sun, water, and nutrient needs for proper development.

Response to Arguments

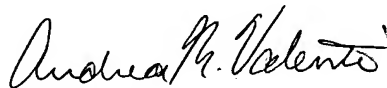
Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. Applicant has not positively claimed the relative relationship of the water level in the reservoir to the soil level in the growing medium container.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

15 March 2005